

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF LOUISIANA  
LAKE CHARLES DIVISION**

THE STATE OF LOUISIANA, et al.,

*Plaintiffs,*

v.

EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION,

*Defendant.*

No. 2:24-cv-629-DCJ-TPL

Judge David C. Joseph

Magistrate Judge Thomas P. LeBlanc

\*\*\*\*\*  
UNITED STATES CONFERENCE OF  
CATHOLIC BISHOPS, et al.,

*Plaintiffs,*

v.

EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION, et al.,

*Defendants.*

No. 2:24-cv-691-DCJ-TPL

Judge David C. Joseph

Magistrate Judge Thomas P. LeBlanc

**BISHOPS PLAINTIFFS' NOTICE OF SUPPLEMENTAL AUTHORITY  
IN SUPPORT OF THEIR MOTION FOR PARTIAL SUMMARY JUDGMENT  
AND PERMANENT INJUNCTION**

The Bishops respectfully submit this notice regarding *Stanley M. Herzog Foundation v. EEOC*, No. 4:24-cv-651 (W.D. Mo. Mar. 18, 2025), attached as Exhibit A. *Herzog* involves parallel litigation challenging the PWFA Final Rule's abortion-accommodation mandate as violating the Administrative Procedure Act, the Religious Freedom Restoration Act, and the First Amendment. The court held that plaintiff had standing and enjoined EEOC from enforcing the mandate against plaintiff or issuing any related notices of right to sue to its employees. Op.22 & n.16.

EEOC suggested that Acting Chair Lucas's "inten[t] to revisit the Final Rule once the EEOC regains a quorum" meant plaintiff could not show standing. Op.10. Disagreeing, *Herzog* held that EEOC's lack of quorum meant that it "*cannot* disavow enforcement or act to change the Final Rule," Op.10 (emphasis added), that EEOC "makes no representation as to the EEOC's ability or obligation to investigate charges filed by employees or to issue right to sue letters," Op.13 n.9, and that EEOC had recently refused to enter a non-enforcement agreement with plaintiff, Op.16 n.11. Further, citing this Court, *Herzog* recognized that the Final Rule's narrow construction of the PWFA's statutory exemption denied "an up-front exemption from investigation and prosecution," which placed a burden on plaintiff's religious exercise. Op.8-9. Thus, plaintiff had pre-enforcement standing because the Final Rule threatened plaintiff's employment policies that are "inherently linked to its religious convictions and are thus affected with a constitutional interest," and plaintiff faced a credible threat of enforcement. Op.7-10. This is equally true for the Bishops. USCCB.MSJ.Resp.3-4; Kunkel.Resp.Decl. ¶¶ 54-56; Ridderhoff.Resp.Decl. ¶¶ 28-35; Brown.Reply.Decl. ¶¶ 26-31; Caraway.Resp.Decl. ¶¶ 10-15; Fontenot.Resp.Decl. ¶¶ 10-15.

Moreover, *Herzog* had no trouble concluding plaintiff's compliance costs of "revising company policies and implementing training programs" were "sufficient to establish injury-in-fact" to adjudicate plaintiff's claims, including its non-APA claims. Op.6-7; *see also* Op.12-13 (noting that "apart from" those "costs of compliance," the requirement to change internal policies on abortion also burdened plaintiff's "religious beliefs"). The Bishops' similar compliance costs likewise establish standing, as does the attendant burden on their religious exercise and speech. USCCB.MSJ.Resp.2-3 (citing *Braidwood Mgmt. v. EEOC*, 70 F.4th 914, 924-25 (5th Cir. 2023)); Ridderhoff.Resp.Decl. ¶¶ 37-40; Brown.Reply.Decl. ¶¶ 32-36; Caraway.Resp.Decl. ¶¶ 16-24; Fontenot.Resp.Decl. ¶¶ 16-19.

Finally, *Herzog* also illustrates the importance of resolving the proper scope of PWFA's statutory religious exemption. *Herzog* correctly acknowledged that under EEOC's narrow interpretation, employers will be "pressure[d] to comply with the Final Rule to the extent that they must accommodate employees who obtain abortions or risk investigation and prosecution" through

EOC's "case-by-case standard." Op.9 & n.7. That is equally true for other sincere religious objections, including the Catholic Church's objections to accommodating IVF and certain sterilization procedures, Kunkel.Resp.Decl. ¶¶ 23-29, which are not currently protected by an injunction. And resolving the scope of the statutory exemption would not only protect such objections but would also, as *Herzog* noted, easily answer any ensuing strict scrutiny analysis reached by this Court, since it would at a minimum show the Final Rule did not utilize the less-restrictive approach baked into the PWFA itself. Op.18 n.12.

Respectfully submitted,

Jonathan Berry  
(W.D. La. Temporary Bar No. 918121)  
James R. Conde  
(W.D. La. Temporary Bar No. 918116)  
Boyden Gray PLLC  
800 Connecticut Ave. NW, Suite 900  
Washington, DC 20006  
Phone: (202) 955-0620  
Fax: (202) 955-0621  
jberry@boydengray.com

/s/ Daniel H. Blomberg  
Daniel H. Blomberg  
(W.D. La. Temporary Bar No. 918117)  
*Trial Attorney*  
/s/ Michael J. O'Brien  
Michael J. O'Brien  
(LA Bar No. 38852)  
Laura Wolk Slavis  
(W.D. La. Temporary Bar No. 918118)  
Andrea R. Butler  
(W.D. La. Temporary Bar No. 918119)  
Jordan T. Varberg  
(W.D. La. Temporary Bar No. 918120)  
The Becket Fund for Religious Liberty  
1919 Pennsylvania Ave. NW, Suite 400  
Washington, DC 20006  
Phone: (202) 955-0095  
Fax: (202) 955-0090  
dblomberg@becketfund.org

*Counsel for Bishops Plaintiffs*

Dated: March 28, 2025

**CERTIFICATE OF SERVICE**

I hereby certify that on March 28, 2025, the foregoing was served on counsel for all parties via the Court's CM/ECF system.

/s/ Daniel H. Blomberg

Daniel H. Blomberg  
(W.D. La. Temporary Bar No. 918117)  
*Trial Attorney*

/s/ Michael J. O'Brien

Michael J. O'Brien  
(LA Bar No. 38852)

Dated: March 28, 2025